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FEDERAL TRADE COMMISSION

16 CFR Part 1

Adjustments to Civil Penalty Amounts

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is implementing adjustments to the civil penalty amounts within its jurisdiction to account for inflation, as required by law.

DATES: *Effective date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: Commission Rule 1.98 sets forth civil penalty amounts for violations of certain laws enforced by the Commission.¹ As mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,² the Commission adjusted the maximum civil penalty amounts under its jurisdiction through an Interim Final Rulemaking in June 2016³ and a subsequent annual inflation adjustment in January 2017.⁴

¹ 16 CFR 1.98.

² Pub. L. No. 114-74, section 701, 129 Stat. 599 (2015). The Act amends the Federal Civil Penalties Inflation Adjustment Act (“FCPIAA”), Pub. L. No. 101-410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note).

³ 81 FR 42476 (June 30, 2016).

⁴ 82 FR 8135 (Jan. 24, 2017).

Following the initial catch-up adjustment, the FCPIAA, as amended, directs agencies to adjust their civil penalties for inflation every January thereafter. Accordingly, the Commission is increasing these maximum civil penalty amounts to address inflation since the January 2017 adjustment. The following adjusted amounts will take effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**:

- Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1) (premerger filing notification violations under the Hart-Scott-Rodino Improvements Act)—Increase from \$40,654 to \$41,484;
- Section 11(l) of the Clayton Act, 15 U.S.C. 21(l) (violations of cease and desist orders issued under Clayton Act section 11(b))—Increase from \$21,598 to \$22,039;
- Section 5(l) of the FTC Act, 15 U.S.C. 45(l) (unfair or deceptive acts or practices)—Increase from \$40,654 to \$41,484;
- Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (unfair or deceptive acts or practices)—Increase from \$40,654 to \$41,484;
- Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B) (unfair or deceptive acts or practices)—Increase from \$40,654 to \$41,484;
- Section 10 of the FTC Act, 15 U.S.C. 50 (failure to file required reports)—Increase from \$534 to \$545;

- Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65 (failure by associations engaged solely in export trade to file required statements)—Increase from \$534 to \$545;
- Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b) (failure by wool manufacturers to maintain required records)—Increase from \$534 to \$545;
- Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e) (failure to maintain required records regarding fur products)—Increase from \$534 to \$545;
- Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2) (failure to maintain required records regarding fur products)—Increase from \$534 to \$545;
- Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a) (knowing violations of EPCA section 332, including labeling violations)—Increase from \$440 to \$449;
- Section 525(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) (recycled oil labeling violations)—Increase from \$21,598 to \$22,039;
- Section 525(b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(b) (willful violations of recycled oil labeling requirements)—Increase from \$40,654 to \$41,484;
- Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2) (knowing violations of the Fair Credit Reporting Act)—Increase from \$3,817 to \$3,895;

- Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Pub. L. No. 108-173, 21 U.S.C. 355 note (failure to comply with filing requirements)—Increase from \$14,373 to \$14,666; and
- Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304 (violations of prohibitions on market manipulation and provision of false information to federal agencies)—Increase from \$1,156,953 to \$1,180,566.

Calculation of inflation adjustments

The FCPIAA, as amended, directs federal agencies to adjust each civil monetary penalty under their jurisdiction for inflation in January of each year pursuant to a cost-of-living adjustment.⁵ The cost-of-living adjustment is based on the percent change between the U.S. Department of Labor’s Consumer Price Index for all-urban consumers (“CPI-U”) for the month of October preceding the date of the adjustment, and the CPI-U for October of the prior year.⁶ Based on that formula, the cost-of-living adjustment multiplier for 2018 is 1.02041. The FCPIAA also directs that these penalty level adjustments should be rounded to the nearest dollar. Agencies do not have discretion over whether to adjust a maximum civil penalty, or the method used to determine the adjustment.

The following chart illustrates the application of these adjustments to the civil monetary penalties under the Commission’s jurisdiction.

⁵ 28 U.S.C. 2461 note (4).

⁶ *Id.* (3), (5)(b); Office of Management and Budget, Memorandum M-18-03, *Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*, at 4 (December 15, 2017), available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf>.

CALCULATION OF ADJUSTMENTS TO MAXIMUM CIVIL MONETARY PENALTIES

<i>Citation</i>	<i>Description</i>	<i>Current Penalty (2017)</i>	<i>Adjustment multiplier</i>	<i>Adjusted Penalty</i>
16 CFR 1.98(a): 15 U.S.C. 18a(g)(1)	Premerger filing notification violations	\$40,654	1.02041	\$41,484
16 CFR 1.98(b): 15 U.S.C. 21(l)	Violations of cease and desist orders	\$21,598	1.02041	\$22,039
16 CFR 1.98(c): 15 U.S.C. 45(l)	Unfair or deceptive acts or practices	\$40,654	1.02041	\$41,484
16 CFR 1.98(d): 15 U.S.C. 45(m)(1)(A)	Unfair or deceptive acts or practices	\$40,654	1.02041	\$41,484
16 CFR 1.98(e): 15 U.S.C. 45(m)(1)(B)	Unfair or deceptive acts or practices	\$40,654	1.02041	\$41,484
16 CFR 1.98(f): 15 U.S.C. 50	Failure to file required reports	\$534	1.02041	\$545
16 CFR 1.98(g): 15 U.S.C. 65	Failure to file required statements	\$534	1.02041	\$545
16 CFR 1.98(h): 15 U.S.C. 68d(b)	Failure to maintain required records	\$534	1.02041	\$545
16 CFR 1.98(i): 15 U.S.C. 69a(e)	Failure to maintain required records	\$534	1.02041	\$545
16 CFR 1.98(j): 15 U.S.C. 69f(d)(2)	Failure to maintain required records	\$534	1.02041	\$545
16 CFR 1.98(k): 42 U.S.C. 6303(a)	Knowing violations	\$440	1.02041	\$449
16 CFR 1.98(l): 42 U.S.C. 6395(a)	Recycled oil labeling violations	\$21,598	1.02041	\$22,039
16 CFR 1.98(l): 42 U.S.C. 6395(b)	Willful violations	\$40,654	1.02041	\$41,484
16 CFR 1.98(m): 15 U.S.C. 1681s(a)(2)	Knowing violations	\$3,817	1.02041	\$3,895
16 CFR 1.98(n): 21 U.S.C. 355 note	Non-compliance with filing requirements	\$14,373	1.02041	\$14,666
16 CFR 1.98(o): 42 U.S.C. 17304	Market manipulation or provision of false information to federal agencies	\$1,156,953	1.02041	\$1,180,566

Effective Dates of New Penalties

These new penalty levels apply to civil penalties assessed after the effective date of the applicable adjustment, including civil penalties whose associated violation predated the effective

date.⁷ These adjustments do not retrospectively change previously assessed or enforced civil penalties that the FTC is actively collecting or has collected.

Procedural Requirements

The FCPIAA, as amended, directs agencies to adjust civil monetary penalties through rulemaking and to publish the required inflation adjustments in the Federal Register, notwithstanding section 553 of title 5, United States Code. Pursuant to this congressional mandate, prior public notice and comment under the APA and a delayed effective date are not required. For this reason, the requirements of the Regulatory Flexibility Act (“RFA”) also do not apply.⁸ Further, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended. 44 U.S.C. 3501 *et seq.*

List of Subjects for 16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

Text of Amendments

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

PART 1 – GENERAL PROCEDURES

Subpart L—Civil Penalty Adjustments Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended

1. The authority citation for part 1, subpart L continues to read as follows:

Authority: 28 U.S.C. 2461 note.

⁷ 28 U.S.C. 2461 note (6).

⁸ A regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment. *See* 5 U.S.C. 603.

2. Revise § 1.98 to read as follows:

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission’s jurisdiction. The following maximum civil penalty amounts apply only to penalties assessed after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, including those penalties whose associated violation predated **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

- (a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—\$41,484;
- (b) Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*)—\$22,039;
- (c) Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*)—\$41,484;
- (d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—\$41,484;
- (e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—\$41,484;
- (f) Section 10 of the FTC Act, 15 U.S.C. 50—\$545;
- (g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—\$545;
- (h) Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b)—\$545;
- (i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—\$545;
- (j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—\$545;
- (k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—\$449;
- (l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—\$22,039 and \$41,484, respectively;
- (m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—\$3,895;
- (n) Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Pub. L. No. 108-173, 21 U.S.C. 355 note—\$14,666;

(o) Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304—\$1,180,566; and

(p) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

By direction of the Commission.

Donald S. Clark,
Secretary.

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